

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, WC Docket No. 03-45 (adopted Feb. 12, 2004).

As the companion NPRM we issue today embarks on a broad inquiry into the appropriate future treatment of VOIP services, I am pleased that the Commission is also providing a measure of certainty regarding existing law. The guidance we provide in this declaratory ruling should come as no surprise: There can be no legitimate argument that Free World Dialup constitutes a telecommunications service. Pulver neither provides the transmission functionality that its subscribers use nor charges a fee for its service. It thus falls squarely outside the statutory definition of a telecommunications service.¹ It strikes me as equally clear that what Pulver *does* offer is “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information *via telecommunications*.”² Thus, it is an information service.

While this classification and our accompanying assertion of federal jurisdiction simply reaffirm what many assumed to be the case — that Free World Dialup, which makes no use of the public switched telephone network or conventional telephone numbers, is not subject to common-carrier-type regulations — this decision serves a vital function. There is tremendous regulatory uncertainty surrounding the provision of IP-enabled services. Although the Commission necessarily must conduct a full rulemaking before developing a comprehensive *new* framework for such services, we can and should act now to provide clarity regarding *existing* law. Confirming that providers of peer-to-peer services such as Free World Dialup may operate free from the heavy constraints of public-utility regulations is a good first step. The Commission should follow this action with one or more rulings clarifying the extent to which regulatory obligations apply, or do not apply, to other categories of service. In particular, the Commission should resolve outstanding questions about the applicability of our access charge regime to “phone-to-phone” services that use IP in the backbone.

While this ruling confirms that Free World Dialup is not subject to our panoply of common carrier regulations, the accompanying NPRM appropriately asks whether *all* IP-enabled services should be required to meet certain social policy objectives in the future. For example, we will need to resolve whether and how such VOIP services will contribute to universal service. And although the Commission intends to address CALEA-related issues in a separate rulemaking, there is no doubt that an exemption from economic regulations is not a license to flout surveillance requests from law-enforcement agencies. I take comfort from the fact that, even before the Commission has commenced its rulemaking on CALEA, Pulver has committed

¹ 47 U.S.C. § 153(46).

² 47 U.S.C. § 153(20) (emphasis added).

to cooperate fully with any warrants seeking to intercept calls placed by Free World Dialup subscribers.

